

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Parts 2, 26, 62, 64, 95, 100, 120, and 165****46 CFR Parts 7 and 28****[USCG 2001-9044]****RIN 2115-AG13****Territorial Seas, Navigable Waters, and Jurisdiction****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This proposed rule would conform the Coast Guard's definitions of jurisdictional terms to existing law. We propose these updates so that our regulatory definitions will reflect statutory changes and Presidential proclamations affecting our jurisdiction. These changes would clarify how the Coast Guard interprets its jurisdiction to enforce treaties, laws, and regulations of the United States.

DATES: Comments and related materials must reach the Docket Management Facility on or before November 12, 2002.

ADDRESSES: To make sure that your comments and related materials are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-9044), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) By electronic means through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also

find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Alex Weller, Office of Maritime and International Law, U.S. Coast Guard, telephone 202-267-0097. If you have questions on viewing or submitting materials to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. If you do, please include your name and address, identify the docket number for this rulemaking (USCG-2001-9044), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Part 2 of title 33 of the Code of Federal Regulations (33 CFR part 2) contains definitions of jurisdictional terms. The Coast Guard uses these definitions to enforce treaties, laws, and regulations of the United States. Most of the definitions in this part have not been amended since they were written in 1975. Since 1975, however, statutes and other legal authorities on which these jurisdictional terms were based have changed.

Discussion of Proposed Rule

We propose to update the jurisdictional terms in 33 CFR part 2 and related jurisdictional terms in other parts of the Code of Federal Regulations so that their meaning conforms to existing law. Our proposed rule would also clarify how the Coast Guard interprets its jurisdiction with reference to these terms.

The following are the jurisdictional terms we propose to update:

Territorial sea baseline. In proposed § 2.20, the only change we propose for this definition is to include a reference to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)(21 I.L.M. 1261) as a reference for how the baselines are determined.

Territorial sea. As originally drafted and amended in 1975, 33 CFR 2.05-5 defined the extent of the U.S. territorial sea seaward of the baseline as 3 nautical miles. This was the consistent position of the United States up to that time, both internationally and for domestic law purposes.

On December 27, 1988, by Presidential Proclamation 5928 (103 Stat. 2981; 54 FR 777, January 9, 1989), the breadth of the U.S. territorial sea was declared to be 12 nautical miles from the baseline, but only for international law purposes. Presidential Proclamation 5928 specifically stated it was not intended to and did not change existing federal or state domestic laws or regulations.

Certain statutes set the breadth of the United States' "territorial sea" as 3 nautical miles for purposes of the statute. Section 502(8) of the Clean Water Act (33 U.S.C. 1362 (8)) is an example of one of these statutes.

Other statutes authorize the United States to make domestic law applicable in the expanded territorial sea, the area between 3 and 12 nautical miles seaward of the baseline. The Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) is an example of one of these statutes.

Proposed § 2.22(a)(1) lists the purposes, with respect to the United States, for which the 12 nautical mile wide territorial sea is used. These include the statutes within Title 46 U.S.C. subtitle II and the Ports and Waterways Safety Act (PWSA), as amended (33 U.S.C. 1221 *et seq.*) and any regulations issued under the authority of these statutes. They also include the criminal jurisdiction of the United States pursuant to Title 18 U.S.C., and the special maritime and territorial jurisdiction of the United States under 18 U.S.C. 7. Proposed § 2.22(a)(1)(v) states that any statute,

treaty, or regulation we interpret as referring to the expanded territorial sea (out to 12 nautical miles) would fall under the proposed § 2.22(a)(1) territorial sea definition. For those purposes not specified in (a)(1), proposed paragraph (a)(2) defines territorial sea as being 3 nautical miles wide.

For Coast Guard regulations promulgated under two or more statutes, our proposed definition in § 2.22(a)(3) sets forth the standard for their territorial sea limit. If one or more of the statutes authorizes regulatory activity out to 12 nautical miles and one or more of the other statutes does not, the Coast Guard may apply the 12 nautical mile territorial sea definition in § 2.22(a)(1) to the regulation.

The proposed definition of “territorial sea” in § 2.22(b) recognizes and describes the effect of Presidential Proclamation 5928 on international law.

Internal Waters. The definition of “internal waters” in proposed § 2.24 has not been changed substantively from the current definition, however, for ease of understanding and because, in certain respects, the definition of “inland waters” has changed, the two terms, which are currently in the same section (33 CFR 2.05–20), have been placed in separate sections.

Inland Waters. In proposed § 2.26, we have changed the definition of “inland waters” by eliminating the specific reference to the definition of that term in certain statutes, including the Inland Navigation Rules Act. We did this in part because the definition of inland waters in the Inland Navigation Rules Act has been changed from that which appears in 33 CFR 2.05–20(b), and no purpose would be served by simply repeating the new definition in the regulation.

Further, there is no purpose served by separately listing each statute that contains a definition of inland waters that is different than this general definition. If a definition of inland waters appears in a statute or other regulation, for example, the Inland Navigational Rules Act of 1980 (33 U.S.C. chapter 34, specifically 33 U.S.C. 2003(o)) and 46 CFR 10.103, the rule of construction in proposed § 2.5 would apply, so that the specific definition in the statute concerned controls over the inland waters general definition in proposed § 2.26.

Contiguous Zone. In proposed § 2.28(a), we have defined the “contiguous zone” for purposes of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, because that statute contains a delimited definition, which is more restrictive than the President’s Proclamation 7219 of September 2, 1999 (113 Stat. 2138; 64 FR 48701, September 8, 1999, as corrected by 64 FR 49844, September 14, 1999). We have also included a definition in proposed § 2.28(b) that conforms to Presidential Proclamation 7219 for all other purposes.

Two regulations, 46 CFR 7.105 and 46 CFR 28.50, that define the boundary lines in the Gulf of Mexico pursuant to the authority in 33 U.S.C. 151, contain references to the 12-nautical-mile contiguous zone as currently defined in 33 CFR 2.05–15. Those regulations would be amended to conform to the proposed definition of the “territorial sea” in 33 CFR 2.22(a)(1).

Exclusive Economic Zone. In proposed § 2.30 we revise the definition of the “Exclusive Economic Zone” (“EEZ”) to conform to that found in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Certain laws contain specific definitions of the EEZ that differ from the general definition contained in this regulation. In those instances, the rule of construction contained in proposed § 2.5 would apply. No substantive change is intended; the revision is intended to clarify the definition.

High Seas. In proposed § 2.32 we have reorganized and clarified the definitions of “high seas” as used in the various statutes. We have also deleted the discussion of the Coast Guard authority under 14 U.S.C. 89, contained in footnote 1 to 33 CFR 2.05–1(a) because we consider it to be unnecessary to an understanding of the territorial application of the laws and regulations the Coast Guard administers and enforces.

We have also clarified that the waters of the Exclusive Economic Zone are not considered high seas for international law purposes, although UNCLOS makes clear that high seas freedoms of navigation exist in the EEZ. Our proposed definition recognizes this principle.

Finally, we have differentiated between the various breadths of the territorial seas defined in proposed § 2.22, to recognize that territorial seas

have different breadths for purposes of different laws. The different breadths of the territorial seas impacts the corresponding location of the high seas for implementation of the particular statute.

Waters subject to tidal influence, waters subject to the ebb and flow of the tide, and mean high water. In proposed § 2.34, we have made only editorial changes to definitions of these terms currently found in 33 CFR 2.05–27.

Navigable Waters. “Navigable waters of the United States” and “navigable waters” are defined with reference to the different statutes that use those terms and contain specific definitions. The most notable example of this is the Federal Water Pollution Control Act (FWPCA). The legislative history of the FWPCA, as well as judicial decisions, which have interpreted these terms in that Act—until the U.S. Supreme Court’s decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC)—had adopted the broadest possible definition of navigable waters of the United States consistent with the U.S. Constitution in order to further the purposes of the FWPCA.

The Coast Guard’s current definition, 33 CFR 2.05–25, incorporated this concept. In SWANCC, however, the Supreme Court interpreted the term “waters of the United States” and “navigable waters” as used in the FWPCA more narrowly, and invalidated an assertion of jurisdiction under the FWPCA over isolated, non-navigable waters where jurisdiction was based solely on the use of those waters as breeding and feeding grounds by migratory birds. Accordingly, we propose to replace the broad definition in the current regulation, 33 CFR 2.05–25, with one that is consistent with SWANCC.

Our definition in proposed § 2.36 (b) of navigable “waters of the United States” and “navigable waters” for purposes of laws other than the FWPCA is consistent with our proposed paragraph 2.22 (a) that defines territorial sea. Our § 2.36 definition also includes waters over which State governments and the Federal government exercise concurrent jurisdiction.

We have prepared the following table to help you compare our proposed regulations with existing regulations.

TABLE 1.—33 CFR PART 2 DISTRIBUTION AND DERIVATION TABLE

If the regulation is in the current 33 CFR part 2 . . .	You will find it in the NPRM at proposed . . .	If you are looking at the proposed NPRM cite . . .	It is derived from the current 33 CFR . . .
2.01-1	2.1	2.1	2.01-1.
—	2.5	2.5	—
2.05-10	2.20	2.20	2.05-10.
2.05-5	2.22	2.22	2.05-5.
2.05-20	2.24 and 2.26	2.24	2.05-20.
—	—	2.26	2.05-20.
2.05-15	2.28	2.28	2.05-15.
2.05-35	2.30	2.30	2.05-35.
2.05-1	2.32	2.32	2.05-1.
2.05-27	2.34	2.34	2.05-27.
2.05-25	2.36	2.36	2.05-25.
2.05-30	2.38	2.38	2.05-30.
2.10-1	2.40	2.40	2.10-1.
2.10-5	2.45	2.45	2.10-5 and 2.10-10.
2.10-10	2.45.	—	—

Finally, we have included a visual aid depicting the terms defined in this part (see figure 2.1 in proposed § 2.1).

Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we are conforming our jurisdictional definitions to current statutes and presidential proclamations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses; not-for-profit organizations that are independently owned and operated, and are not dominant in their fields; and governmental jurisdictions with populations of less than 50,000.

We are merely conforming our regulatory definitions to statutory authority and presidential proclamations, therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If

you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what extent this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call (202-267-0097) or write (*see* **ADDRESSES**) Alex Weller.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that order and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications, under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2-1, paragraph (34)(a), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. Some of the proposed changes are mandated by statute and should be categorically excluded.

Where a statute does not mandate a change, we will revise the existing language to maintain the status quo for

geographical scope. These changes should also be categorically excluded. The Coast Guard believes that merely updating the regulations to reflect movement of the boundary of the territorial sea from 3 nautical miles to 12 nautical miles from shore will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 2

Administrative practice and procedure, Law enforcement.

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 62

Navigation (water).

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, Penalties.

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

46 CFR Part 7

Law Enforcement, Vessels.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to

amend 33 CFR parts 2, 26, 62, 64, 95, 100, 120, and 165 and 46 CFR parts 7 and 28 as follows:

Title 33—Navigation and Navigable Waters

PART 2—JURISDICTION

1. Revise part 2 to read as follows:

PART 2—JURISDICTION

Subpart A—General

Sec.

2.1 Purpose.

2.5 Specific definitions control.

Subpart B—Jurisdictional Terms

2.20 Territorial sea baseline.

2.22 Territorial sea.

2.24 Internal waters.

2.26 Inland waters.

2.28 Contiguous zone.

2.30 Exclusive Economic Zone.

2.32 High seas.

2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

2.36 Navigable waters of the United States, navigable waters, territorial waters.

2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Subpart C—Availability of Jurisdictional Decisions

2.40 Maintenance of decisions.

2.45 Decisions subject to change or modification and availability of lists and charts.

Authority: 14 U.S.C. 633, 80 Stat. 931 (49 U.S.C. 108); 49 CFR 1.4(b), 1.46(b).

PART 2—JURISDICTION

Subpart A—General

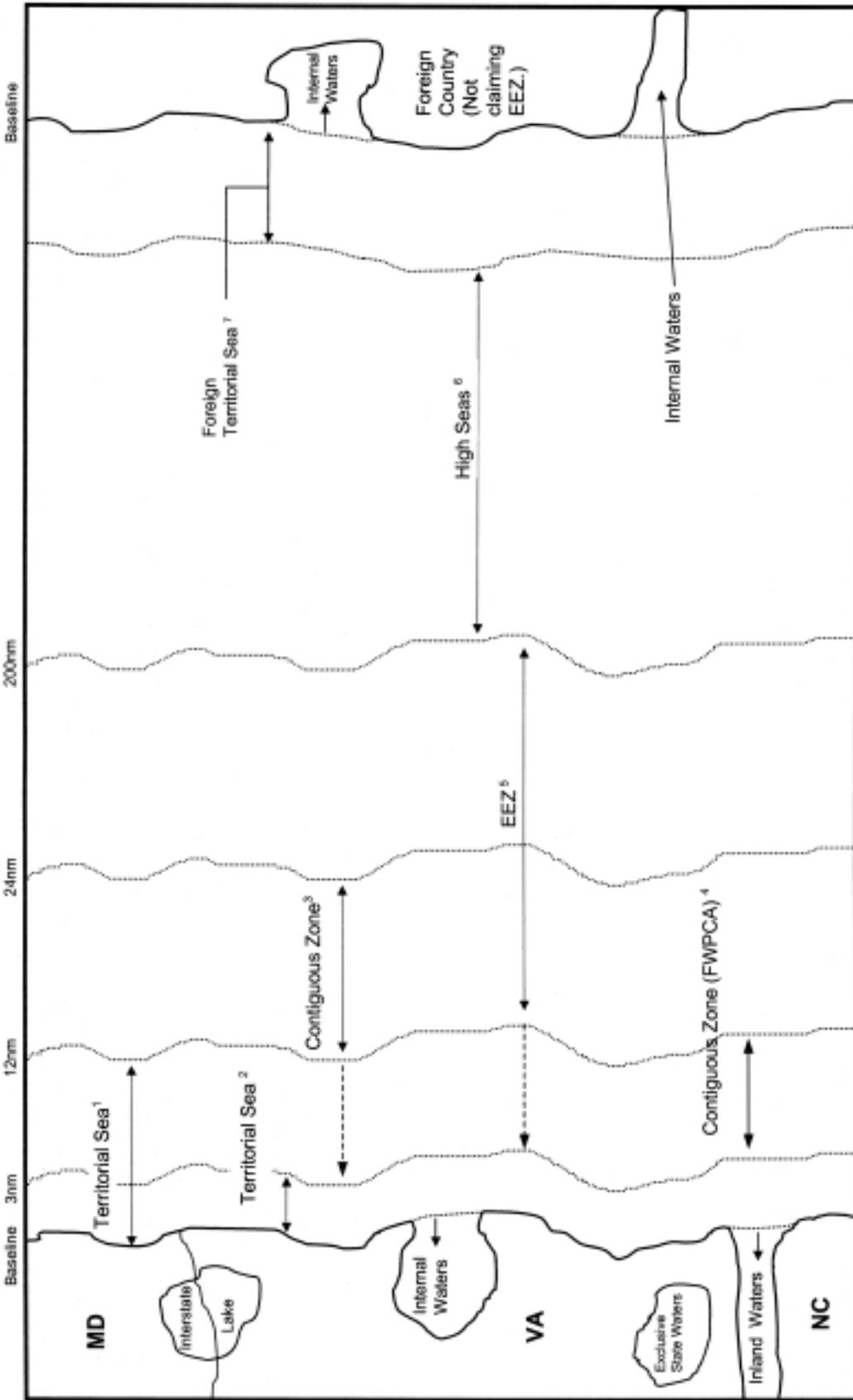
§ 2.1 Purpose.

(a) The purpose of this part is to define terms the Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters in cases where specific jurisdictional definitions are not otherwise provided.

(b) Figure 2.1 is a visual aid depicting the terms defined in this part.

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FIGURE 2.1. JURISDICTIONAL AREAS



¹ Territorial sea for purposes identified in §2.22(a)(1).
² Territorial sea for purposes identified in §2.22(a)(2).
³ Contiguous zone as described in §2.28(b), varies with territorial sea width for particular purpose involved.
⁴ Contiguous zone as described in §2.28(a), for Federal Water Pollution Control Act purposes.
⁵ Exclusive Economic Zone (EEZ) is measured from the seaward limit of the territorial sea, as variously defined in §2.22(a), to a distance of 200 nautical miles from the baseline. The inner (shoreward) boundary of the EEZ will vary for particular purposes.
⁶ High seas as defined in §2.32(c). When a nation has not proclaimed an EEZ, the high seas begin at the seaward edge of the territorial sea
⁷ The U.S. recognizes territorial sea claims of other nations up to a maximum distance of 12 nautical miles from the baseline.

§ 2.5 Specific definitions control.

In cases where a particular statute, regulation, policy or procedure provides a specific jurisdictional definition that differs from the definitions contained in this part, the former definition controls.

Note to § 2.5: For example, the definition of "inland waters" in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2003 (o)) would control the interpretation of inland navigation rules created under that Act and the "inland waters" definition in 46 CFR 10.103 would control regulations in 46 CFR part 10.

Subpart B—Jurisdictional Terms**§ 2.20 Territorial sea baseline.**

Territorial sea baseline means the line defining the shoreward extent of the territorial sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), 21 I.L.M. 1261. Normally, the territorial sea baseline is the mean low water line along the coast of the United States. Note to § 2.20: Charts depicting the territorial sea baseline are available for examination in accordance with § 1.10–5 of this chapter.

§ 2.22 Territorial sea.

(a) With respect to the United States, the following apply—

(1) *Territorial sea* means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, for—

(i) Statutes included within subtitle II, title 46, U.S.C., and the Ports And Waterways Safety Act, as amended (33 U.S.C. 1221 *et seq.*), and any regulations issued under the authority of these statutes.

(ii) Purposes of criminal jurisdiction pursuant to title 18, United States Code.

(iii) The special maritime and territorial jurisdiction as defined in 18 U.S.C. 7.

(iv) Interpreting international law.

(v) Any other treaty, statute, or regulation, or amendment thereto, interpreted by the Coast Guard as incorporating the definition of territorial sea in paragraph (a)(1) of this section.

(2) Unless otherwise specified in paragraph (a)(1) of this section, *territorial sea* means the waters, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(3) In cases where regulations are promulgated under the authority of statutes covered by both paragraphs (a)(1) and (a)(2) of this section, the Coast

Guard may use the definition of territorial sea in paragraph (a)(1) of this section.

(b) With respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.

§ 2.24 Internal waters.

(a) With respect to the United States, *internal waters* means the waters shoreward of the territorial sea baseline.

(b) With respect to any other nation, *internal waters* means the waters shoreward of its territorial sea baseline, as recognized by the United States.

§ 2.26 Inland waters.

Inland waters means the waters shoreward of the territorial sea baseline.

§ 2.28 Contiguous zone.

(a) For the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), *contiguous zone* means the zone, 9 nautical miles wide, adjacent to and seaward of the territorial sea, as defined in § 2.22(a)(2), that was declared to exist in Department of State Public Notice 358 of June 1, 1972 (37 FR 11906, June 15, 1972) and that extends from 3 nautical miles to 12 nautical miles as measured from the territorial sea baseline.

(b) For all other purposes, *contiguous zone* means all waters within the area adjacent to and seaward of the territorial sea, as defined in § 2.22(a), and extending to 24 nautical miles from the territorial sea baseline, but in no case extending within the territorial sea of another nation, as declared in Presidential Proclamation 7219 of September 2, 1999 (113 Stat. 2138).

§ 2.30 Exclusive Economic Zone.

(a) With respect to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement); and United States' overseas possessions and territories,

Exclusive Economic Zone means the zone seaward of and adjacent to the territorial sea, as defined in § 2.22(a), including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline, except where otherwise limited by treaty or other agreement recognized by the United States.

(b) For the purposes of interpretation of international law consistent with the 1982 United Nations Convention on the Law of the Sea, and with respect to other nations, *Exclusive Economic Zone*

means the waters seaward and adjacent to the territorial sea, not extending beyond 200 nautical miles from the territorial sea baseline, as recognized by the United States.

§ 2.32 High seas.

(a) For the purposes of the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. 7, *high seas* means the Great Lakes and all waters seaward of the territorial sea baseline.

(b) For the purposes of section 2 of the Act of February 19, 1895, as amended (33 U.S.C. 151) and the Inland Navigational Rules Act of 1980 (33 U.S.C. chapter 34), *high seas* means the waters seaward of any lines established under these statutes, including the lines described in part 80 of this chapter and 46 CFR part 7.

(c) For the purposes of interpretation of international law, consistent with the United Nations Convention on the Law of the Sea, *high seas* means all waters that are neither the Exclusive Economic Zone, territorial sea (as defined in § 2.22) nor internal waters of the United States or any other nation.

(d) For all other purposes, *high seas* means all waters that are neither territorial seas (as defined in § 2.22) nor internal waters of the United States or any other nation.

§ 2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

Waters subject to tidal influence and *waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

Mean high water is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

§ 2.36 Navigable waters of the United States, navigable waters, and territorial waters.

(a) For the purposes of sections 311 and 312 of the Federal Water Pollution Control Act (FWPCA), as amended (33 U.S.C. 1321 and 1322), and the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), *navigable waters of the United States* and *navigable waters*, mean—

(1) Territorial sea as defined in § 2.22(a)(2) of this chapter;

(2) Internal waters of the United States, as described in paragraphs (b)(2) and (b)(3) of this section and all waters of the United States adjacent or tributary thereto;

(3) Waters subject to the jurisdiction of the United States, as defined in § 2.38 (b); and

(4) All other waters included within the definitions of "navigable waters" and "territorial seas" in 33 U.S.C. 1362 (7) and (8) and 33 U.S.C. 2701 (21) and (35).

(b) For all other purposes, except where Congress has designated them not to be navigable waters of the United States, *navigable waters of the United States, navigable waters, and territorial waters* mean —

(1) Territorial sea of the United States as defined in § 2.22(a) of this chapter;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters that are not subject to tidal influence and—

(i) That are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage; or

(ii) That a governmental or non-governmental body having expertise in waterway improvement determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.

§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Waters subject to the jurisdiction of the United States and waters over which the United States has jurisdiction mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(b).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

Subpart C—Availability of Jurisdictional Decisions

§ 2.40 Maintenance of decisions.

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions of thereof, in order to determine its jurisdiction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the waterway is located.

§ 2.45 Decisions subject to change or modification and availability of lists and charts.

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10–5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

2. The authority citation for part 26 continues to read as follows:

Authority: 14 U.S.C. 2, 33 U.S.C. 1201–1208; 49 CFR 1.45(b), 1.46; Rule 1. International Regulations for the Prevention of Collisions at Sea.

3. In § 26.02, add, in alphabetical order, the definition of "territorial sea" to read as follows:

§ 26.02 Definitions.

* * * * *

Territorial sea means all waters as defined in § 2.22(a)(2) of this chapter.

* * * * *

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

4. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

5. In § 62.3, revise paragraph (g) to read as follows:

§ 62.3 Definition of terms.

* * * * *

(g) *Navigable waters of the United States.* The term navigable waters of the United States is defined in § 2.36(b) of this chapter.

* * * * *

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

6. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

7. In § 64.06, add, in alphabetical order, a definition of "navigable waters of the United States" to read as follows:

§ 64.06 Definition of terms.

* * * * *

Navigable waters of the United States means those waters described in § 2.36(b) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

* * * * *

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

8. The authority citation for part 95 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

9. In § 95.010, add, in alphabetical order, a definition of "waters subject to the jurisdiction of the United States" to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Waters subject to the jurisdiction of the United States means those waters described in § 2.38 of this chapter.

PART 100—MARINE EVENTS

10. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

11. In § 100.05, add paragraph (e) to read as follows:

§ 100.05 Definition of terms used in this part.

* * * * *

(e) *Navigable waters of the United States* means those waters described in § 2.36(b) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

PART 120—SECURITY OF PASSENGER VESSELS

12. The authority citation for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

13. In § 120.110, revise the definitions of “high seas” to read as follows:

§ 120.110 Definitions.

* * * * *

High seas means the waters defined in § 2.32 (d) of this chapter.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

14. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

15. Add § 165.9 to read as follows:

§ 165.9 Geographic application of limited and controlled access areas and regulated navigation areas.

(a) *General.* The geographic application of the limited and controlled access areas and regulated navigation areas in this part are determined based on the statutory authority under which each is created.

(b) *Safety zones and regulated navigation areas.* These zones and areas are created under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.* Safety zones established under 33 U.S.C. 1226 and regulated navigation areas may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(c) *Security zones.* These zones have two sources of authority—the Ports and Waterways Safety Act, 33 U.S.C. 1226, and the Magnuson Act, 50 U.S.C. 191. Security zones established under 33 U.S.C. 1226 may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline. Security zones established under the Magnuson Act, 50 U.S.C. 191, may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea out to a seaward limit of 3 n.m. from the baseline. Security zones established under the Ports and Waterways Safety Act and the Magnuson Act may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter,

including the territorial sea to a seaward limit of 3 n.m. from the baseline.

(d) *Naval vessel protection zones.* These zones are issued under the authority of 14 U.S.C. 91 and 633 and may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 n.m. from the baseline.

Title 46—Shipping**PART 7—BOUNDARY LINES**

16. The authority citation for part 7 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

17. Revise § 7.105 to read as follows:

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5' N, longitude 82°11.2' W; along the 12-mile line which marks the seaward limits of the territorial sea (as defined in 33 CFR 2.22 (a)(1)) to Rio Grande, Texas at approximate position latitude 25°58.6' N, longitude 96°55.5' W.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

18. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

19. In § 28.50, revise the definitions of “boundary lines” and “coastline”, to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Boundary lines means the lines described in part 7 of this chapter. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets, and rivers. In some areas, they are along the 12-mile line that marks the seaward limits of the territorial sea and, in other areas, they come ashore.

* * * * *

Coastline means the territorial sea baseline as defined in 33 CFR 2.20.

* * * * *

Dated: August 6, 2002.

Calvin M. Lederer,

Acting Chief Counsel, U.S. Coast Guard.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[TN–238–200112; FRL–7258–9]

Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee on November 7, 2000, with additional material submitted on January 11, 2001, and October 4, 2001. This revision responds to the EPA’s regulation entitled, “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,” otherwise known as the “NO_x SIP Call.” This revision establishes and requires a nitrogen oxides (NO_x) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The intended effect of this SIP revision is to reduce emissions of NO_x in order to help attain the national ambient air quality standard for ozone. EPA is proposing to approve Tennessee’s NO_x Reduction and Trading Program, with one exception, because it meets the requirements of the Phase I NO_x SIP Call that will significantly reduce ozone transport in the eastern United States. The exception refers to Section 96.40 State trading program budget. Tennessee revised the model rule to allow for the allocation of additional allowances to NO_x budget units that have been generated through NO_x emission reductions from industrial, mobile, and area source sectors. However, Tennessee’s rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee’s NO_x Reduction and Trading Program with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by replacing or revising the unapprovable language.

DATES: Written comments must be received on or before September 13, 2002.